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N.Y. CONST. art. I, § 6:

No person shall be subject to be twice put in jeopardy for the same offense

U.S. CONST. amend. V:

No person shall be . . . subject for the same offence to be twice put in jeopardy of life or limb

COURT OF APPEALS

People v. Allen¹
(decided November 2, 1995)

After defendant was scheduled for trial on felony charges, the trial court declared a mistrial because of the prolonged illness of a key witness.² On the first day of the defendant's second trial, defendant pled guilty to two counts of weapons possession, drug possession and criminal use of drug paraphernalia.³ In addition, the defendant waived his right to appeal and expressly waived any claim of double jeopardy.⁴ After sentencing, the defendant appealed his conviction, arguing that his waiver of double jeopardy was invalid under the New York State⁵ and Federal⁶ Constitutions.⁷ The appellate division upheld the conviction and the New York Court of Appeals affirmed.⁸

1. 86 N.Y.2d 599, 658 N.E.2d 1012, 635 N.Y.S.2d 139 (1995).

2. *Id.* at 600-01, 658 N.E.2d at 1013, 635 N.Y.S.2d at 140.

3. *Id.* at 601, 658 N.E.2d at 1013, 635 N.Y.S.2d at 140.

4. *Id.*

5. N.Y. CONST. art. I, § 6. Article I, section 6 of the New York State Constitution provides in pertinent part: "No person shall be subject to be twice put in jeopardy for the same offense" *Id.*

6. U.S. CONST. amend. V. The Fifth Amendment provides in pertinent part: "No person shall be . . . subject for the same offence to be twice put in jeopardy of life or limb." *Id.*

7. *Allen*, 86 N.Y.2d at 601, 658 N.E.2d at 1013, 635 N.Y.S.2d at 140.

8. *Id.*

The defendant was scheduled to be tried for attempted murder, attempted aggravated assault upon a police officer, weapons possession, and various drug possession charges.⁹ Before the commencement of the trial, the prosecutor was granted a one-day continuance because his first witness had been hospitalized following a heart attack.¹⁰ The following day, it became apparent that the witness would be unable to come to court for at least seven weeks.¹¹ As a result, the prosecutor requested a second continuance.¹² The court denied the motion and the People moved for a mistrial, which was granted.¹³

The defendant entered into a plea agreement on the day his second trial was scheduled to begin.¹⁴ The defendant waived his right to appeal and expressly waived any double jeopardy claim.¹⁵ However, after sentencing, he appealed his conviction to the appellate division, claiming that his waiver of double jeopardy was invalid.¹⁶ Further, he claimed that the trial court's finding of manifest necessity for a mistrial was in error.¹⁷ The appellate division affirmed the conviction based on manifest necessity but explained that the waiver was invalid.¹⁸

The New York Court of Appeals considered the defendant's contention that a double jeopardy defense was "fundamental to the integrity of the criminal process . . . [and] cannot be validly waived."¹⁹ However, the court found the defendant's claims unpersuasive. The court distinguished the defendant's double jeopardy claim from other claims that are not waivable on appeal.²⁰ The court stated that "no policy or societal interest

9. *Id.* at 600, 658 N.E.2d at 1013, 635 N.Y.S.2d at 140.

10. *Id.*

11. *Id.*

12. *Id.* at 600-01, 658 N.E.2d at 1013, 635 N.Y.S.2d at 140.

13. *Id.* at 601, 658 N.E.2d at 1013, 635 N.Y.S.2d at 140.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* at 601, 658 N.E.2d at 1014, 635 N.Y.S.2d at 141.

20. *Id.* at 602, 658 N.E.2d at 1014, 635 N.Y.S.2d at 141.

requires us to place double jeopardy in a category with other nonwaivable defenses.”²¹

The court cited to *People v. Michael*,²² where the New York Court of Appeals held that “a double jeopardy objection may be waivable in certain unusual cases, as where a defendant explicitly consents to retrial despite a double jeopardy defense.”²³ The court reasoned that since plea bargaining is now an integral part of the criminal justice system, its usefulness would be impeded if the accused could not “waive any right which he or she enjoys.”²⁴ However, certain protections cannot be waived. The right to a speedy trial,²⁵ challenges to the legality of court-imposed sentences,²⁶ and questions as to the defendant’s competency to stand trial²⁷ are all unwaivable rights.

In contrast, the court stated that the double jeopardy right “does not implicate a larger societal value.”²⁸ Instead, “the defendant gives up his right to be tried by a particular tribunal, and subjects himself to a second trial, yet also avoids a verdict in a trial which may have been proceeding very poorly for him.”²⁹

Finally, the court found that its holding was consistent with the position taken by the United States Supreme Court.³⁰ The court

21. *Id.* at 604, 658 N.E.2d at 1015, 635 N.Y.S.2d at 142.

22. 48 N.Y.2d 1, 394 N.E.2d 1134, 420 N.Y.S.2d 371 (1979).

23. *Id.* at 7, 394 N.E.2d at 1136, 420 N.Y.S.2d at 374 (citations omitted).

24. *Allen*, 86 N.Y.2d at 604, 650 N.E.2d at 1015, 635 N.Y.S.2d at 142. See *People v. Seaberg*, 74 N.Y.2d 1, 541 N.E.2d 1022, 543 N.Y.S.2d 968 (1989).

25. See *People v. Blakley*, 34 N.Y.2d 311, 313 N.E.2d 763, 357 N.Y.S.2d 459 (1974).

26. See *People v. Francabandera*, 33 N.Y.2d 429, 310 N.E.2d 292, 354 N.Y.S.2d 609 (1974).

27. See *People v. Armlin*, 37 N.Y.2d 167, 332 N.E.2d 870, 371 N.Y.S.2d 691 (1975).

28. *Allen*, 86 N.Y.2d at 603, 650 N.E.2d at 1015, 635 N.Y.S.2d at 142.

29. *Id.* (quoting *People v. Ferguson*, 67 N.Y.2d 383, 390, 494 N.E.2d 77, 81, 502 N.Y.S.2d 972, 976-77 (1986)).

30. See *Menna v. New York*, 423 U.S. 61 (1975). In *Menna*, a defendant was jailed for failing to appear before a grand jury, and subsequently indicted for his refusal to appear. *Id.* at 61. He pled guilty to that charge and was sentenced on his plea. *Id.* The Court ruled that the double jeopardy claim had not been waived by the defendant’s guilty plea. *Id.* at 62.